

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 25, 2013

In the Matter of DENNIS/BRADLEY, Minors.

No. 314796; 314799
Hillsdale Circuit Court
Family Division
LC No. 10-000312-NA

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father and respondent-mother appeal as of right the trial court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss Minors*, __ Mich App __; __ NW2d __, issued May 9, 2013 (Docket No. 311610), slip op at 3. "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. Only respondent-father challenges the statutory grounds on appeal. This case proceeded for over 2-1/2 years in the lower court. The minor children were removed from the care of respondents for the majority of the case, about 24 months. The primary conditions that led to adjudication were substance abuse, improper supervision, and homelessness. Throughout the proceedings, respondents tested positive for, or admitted to the use of, marijuana, cocaine, vicodin, oxycodone, and K2 or synthetic marijuana. Although there were some negative drug screens, there were several missed screens and positive screens. Respondents were offered services for substance abuse through many different providers, some within a few miles of their home, but respondents never participated consistently. Respondents never completed substance abuse treatments.

Other conditions included financial issues, anger management of respondent-father, and lack of progress. Respondents had a history of improperly supervising the children, and there was no indication that this issue was successfully addressed. Respondents failed to complete parenting classes. Also, during the case, respondents moved several times and never secured a safe and stable home. Respondent-father began counseling for anger management, but the service was discontinued when he threatened the counselor. Indeed, throughout the proceedings, respondent-father, and to a lesser extent respondent-mother, threatened police officers, caseworkers, and others associated with the case. Respondent-father had an extensive criminal record, including a couple of convictions for assaulting police officers. There was testimony that respondents were offered every possible service. There were brief periods of progress, but then there was regression. Throughout the more than two years of court proceedings, respondents failed to address the conditions that led to adjudication or the other conditions, even when provided services to do so.

The trial court did not clearly err when it terminated respondent-father's parental rights for failure to rectify the conditions that led to adjudication or the other conditions when given the recommendations and opportunity to do so, and there was no indication that the conditions would be rectified in a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i) and (ii); *In re Trejo Minors*, 462 Mich 341, 357-360; 612 NW2d 407 (2000).

Regarding MCL 712A.19b(3)(g) and (j), there is no indication that respondent-father ever provided proper care and custody for the children. The children were exposed to substance abuse and fighting between the parents. Respondent-father never secured safe and stable housing. Although provided with extensive opportunities through services offered by petitioner, respondent-father never addressed his anger management problem and substance abuse issues, nor did he complete counseling. Although there was some participation in services, respondent-father never made sustainable progress. Additionally, respondent-father was inconsistent as to parental visits with the children, which caused them to have emotional and behavioral issues. On this record, the trial court did not clearly err in finding clear and convincing evidence that respondent-father did not provide proper care and custody for the children and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the ages of the children. MCL 712A.19b(3)(g). On this same evidence, the trial court did not clearly err in determining that there was a reasonable likelihood, based on the conduct or capacity of respondent-father, that the children would be harmed if returned to respondent-father. MCL 712A.19b(3)(j). Moreover, although respondent-mother does not challenge the statutory grounds for termination, we nonetheless hold that the trial court did not commit clear error in finding that the grounds for termination with respect to respondent-mother were proven by clear and convincing evidence.

Both respondents challenge the ruling that termination was in the children's best interests. The evidence established that termination of both respondents' parental rights was in the children's best interests. MCL 712A.19b(5). A child's need for stability and permanency may be considered in determining best interests. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). The children needed stability and permanency, and there was evidence that respondents could not provide either. Respondents were inconsistent in their visits with the children, causing the children emotional and behavioral difficulties. The children were doing well in foster care. There was testimony that it would take the parents a lengthy amount of time,

if ever, to address the barriers to reunification. Meanwhile, the children had been wards of the court for over 2-1/2 years. There was also testimony by mental health experts regarding the many behavioral problems suffered by the children due to the home environment created by respondents; behavior that began improving in foster care.

Respondent-father argues that respondents and the children love each other. Other considerations can outweigh the bond between a parent and children. See *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008) (finding termination was in the best interests of the children even though the children would experience grief and loss, given that, with support, the children would be able to overcome the loss and develop stability and permanence). In this case, concern regarding respondents' unresolved issues with substance abuse and housing outweighed any bond with the children. Respondent-mother argues that the trial court erred in finding termination to be in the children's best interests because the trial court did not consider any alternative permanency plan or whether a relative was available for placement. However, there was evidence that the children were thriving in foster care, and there was no indication respondent-mother would be able to care for the children at any time in the future. The record does not reflect that any appropriate relatives were available for placement. Indeed, respondent-mother concedes in her appellate brief that "[i]t is not known whether an extended family member was willing to take the children[.]" This is not a case in which there was an actual placement with a relative during the proceedings and the court failed to take that into consideration with respect to the best-interest determination. See *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Moreover, if termination is in the best interests of the children, the trial court may terminate parental rights rather than placing the children with relatives. *Id.*; *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). On the record presented, the trial court did not clearly err when it found that termination was in the best interests of the children. MCL 712A.19b(5).

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto